



House of Representatives

General Assembly

File No. 603

February Session, 2016

Substitute House Bill No. 5258

House of Representatives, April 14, 2016

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING A PROPERTY OWNER'S LIABILITY FOR THE EXPENSES OF REMOVING A FALLEN TREE OR LIMB.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2016*) (a) If a tree located on
2 private real property, or a limb from such tree falls on an adjoining
3 private property owner's land, the owner of the real property from
4 which such tree or limb fell shall be presumed liable for the expenses
5 of removing such tree or limb from such adjoining private property
6 owner's land, if, prior to such tree or limb falling: (1) An arborist, as
7 defined in section 23-61a of the general statutes, inspected the tree and
8 documented that the tree or limb was diseased, decayed or damaged
9 and likely to fall within five years of the date of such inspection; (2) the
10 adjoining private property owner provided written notice by certified
11 mail, return receipt requested, to the owner of the real property from
12 which such tree or limb fell that the tree or limb was diseased, decayed
13 or damaged and likely to fall within five years of the date of such
14 inspection and requested that the condition be cured by removal,

15 pruning, spraying or any other appropriate method; and (3) the owner
16 of the real property from which such tree or limb fell failed to cure the
17 condition by removal, pruning, spraying or any other appropriate
18 method within ninety days of the date of receiving such written notice.
19 No property owner shall be required to provide access to his or her
20 property for inspection by such arborist. Such arborist's inability to
21 access property for such inspection shall not waive the requirement
22 that such arborist make a determination that a tree or limb is diseased,
23 decayed or damaged and likely to fall within five years of the date of
24 such inspection. Written notice provided by a private property owner
25 pursuant to this subsection shall be deemed personal to the particular
26 owner providing such notice and shall not run with the land.

27 (b) The presumption in subsection (a) of this section may be
28 rebutted upon a showing that: (1) After notice is given as described in
29 subdivision (2) of subsection (a) of this section, an arborist, as defined
30 in section 23-61a of the general statutes, inspected the tree or limb and
31 documented that the tree or limb was not diseased, decayed or
32 damaged and likely to fall; or (2) such tree or limb fell as a result of
33 impact with another physical object, including, but not limited to, a
34 motor vehicle collision, fire, lightning strike or other act of God.

35 (c) The provisions of this section shall not affect any rights of a
36 policyholder under a liability insurance policy, except that the
37 insurance company that issued such insurance policy may deduct from
38 any amount owed to such insured for a covered loss arising from such
39 tree or limb falling, the amount recovered by the policyholder
40 pursuant to subsection (a) of this section to the extent that such
41 amount would have been a covered loss under such insurance policy.

42 (d) The provisions of this section shall not be construed to limit any
43 person's right to pursue any additional civil remedy otherwise allowed
44 by law.

45 (e) As used in this section "private real property" does not include:
46 (1) Real property owned by a political subdivision of the state, a water
47 company as defined in section 25-32a of the general statutes, or a

48 nonprofit organization qualified as a tax-exempt organization under
49 Section 501(c)(3) of the Internal Revenue Code of 1986, or any
50 subsequent corresponding internal revenue code of the United States;
51 (2) real property that is subject to a conservation easement held by
52 such nonprofit organization; (3) timber land as described in section 12-
53 97 of the general statutes; or (4) farm land, forest land or open space
54 land as described in sections 12-107a to 12-107f, inclusive, of the
55 general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	New section

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill affects private landowners and does not result in a fiscal impact to the state or municipalities.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 5258*****AN ACT CONCERNING A PROPERTY OWNER'S LIABILITY FOR THE EXPENSES OF REMOVING A FALLEN TREE OR LIMB.*****SUMMARY:**

This bill establishes conditions under which a private real property owner ("land owner") is presumed liable for the expenses of removing a tree or tree limb that fell from his or her property onto an adjoining private owner's land.

In general, the land owner must have failed to act within 90 days after the adjoining owner notified him or her that, based on an arborist's inspection, a tree or limb on the property was likely to fall within five years. The bill specifies how the presumption may be rebutted.

Among other things, it also (1) exempts certain property from its provisions and (2) allows an insurance company, when paying for a related claim, to deduct any amount the adjoining land owner recovers under the bill.

EFFECTIVE DATE: October 1, 2016

LIABILITY FOR FALLEN TREES***Private Real Property***

Under the bill, "private real property" does not include:

1. real property owned by a political subdivision of the state, a water company, or a tax-exempt nonprofit organization;
2. real property subject to a conservation easement held by a tax-exempt nonprofit organization;

3. timber land of more than ten years' growth; or
4. farm land, forest land, or open space land eligible for the "490 program" (which allows such land to be assessed for property tax purposes based on its current use value rather than its full market value).

Presumption of Liability

Under the bill, a private land owner is presumed liable for the expenses of removing a tree or tree limb that fell from his or her property onto an adjoining private owner's land if, before the tree or limb fell:

1. a licensed arborist inspected the tree and documented that the tree or a limb was diseased, decayed, or damaged and likely to fall within five years (the bill does not specify who must request the inspection);
2. the adjoining private property owner notified the land owner of this determination and requested that the land owner cure the condition by any appropriate method (including removing, pruning, or spraying the tree); and
3. the land owner failed to do so within 90 days after receiving this notice.

The notice must be in writing and sent by certified mail, return receipt requested.

The bill specifies that this notice is deemed personal to the owner who provided it and does not run with the land. (In other words, the presumption of liability would not apply if the owner providing the notice sold the property before the tree fell, unless the new owner provided his or her own notice.)

Rebutting the Presumption

The bill's presumption of liability may be rebutted if the land owner shows that:

1. after he or she received the notice, an arborist inspected the tree or limb and documented that it was not diseased, decayed, or damaged and not likely to fall or
2. the tree or limb fell due to impact with another physical object, including a motor vehicle collision, or fire, lightning, or other act of God.

Arborist Access and Impact on the Presumption

The bill provides that:

1. land owners are not required to allow access to their property for an arborist’s inspection and
2. if an arborist is unable to access the property, this does not waive the requirement for the arborist’s determination as described above to establish the presumption.

Insurance and Other Remedies

The bill allows an insurance company to deduct from a payment under a liability policy the amount the policyholder recovers under the bill, to the extent that amount would be a covered loss under the policy. It does not otherwise affect a policyholder’s rights under a liability policy.

The bill also does not limit anyone’s right to pursue other civil remedies as allowed by law.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 45 Nay 0 (03/30/2016)